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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: GRAND JURY SUBPOENA,
DATED July 19, 2006.

GREG FRANCIS ANDERSON,

Witness - Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

No. 06-16572

D.C. No. CR-06-90292-WHA

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted November 16, 2006^{**}

Before: REINHARDT, O'SCANNLAIN and GRABER, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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The opposed motion to file appellee's response ex parte and under seal is granted.

The court has received and reviewed the district court's October 5, 2006 order, the parties' October 23, 2006 simultaneous memoranda and appellee's response to the question whether the entire grand jury proceeding was tainted because the Paragraph 8 recording was presented to the grand jury. The court is satisfied that the district court's factual finding that the government's questions were not tainted by the Paragraph 8 recording is not clearly erroneous. *See Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004). The evidence demonstrates that the Paragraph 8 material was not provided to grand jury 06-1, in either recorded or transcript form.

For the reasons expressed in this order, the district court's order of contempt is affirmed.

AFFIRMED.